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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1519 of 1979
with
FIRST APPEAL No.198 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements : YES

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MR KS NANAVATI for Respondent No. 2
UNSERVED-REFUSED (N) for Respondent No. 3

2. First Appeal No. 198 of 1980
MR RN SHAH for appellant
MR KS NANAVATI for respondent No.1
MR ARUN H MEHTA for resondent No.3
Unserved-refused (N) for 2
Mr.M.T.M.Hakim, learned Advocate as intervener.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 10/04/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. [First Appeal No.1519 of 1979 is filed by the Oriental Fire and General Insurance Company having its office at New Delhi, under Section 110-A of the Motor Vehicles Act, 1939 against judgment and award dated February 16, 1979, rendered by the Motor Accident Claims Tribunal No.I, Vadodara, in Motor Accident Claim Application No. 207 of 1976, by which the said Insurance Company and the respondent Nos.2 & 3 are directed to pay a sum of Rs.1,20,750/-with proportionate cost and interest at the rate of 6% per annum from the date of application till payment, as compensation to the respondent No.1.

First Appeal No. 198 of 1980 is filed by the original claimant under Section 110-A of the Motor Vehicles Act, 1939, for enhancement of compensation awarded by the Motor Accident Claims Tribunal No.I, Vadodara vide its judgment and order dated February 16, 1979, in Motor Accident Claim Application No. 207 of 1976, as the claim of the appellant to direct the respondents to pay a sum of Rs.3,00,000 (Rupees Three Lakhs only) with proportionate cost and interest from the date of application is rejected and the respondents are directed to pay a sum of Rs. 1,20,750/-with proportionate cost and interest at the rate of 6% per annum from the date of application till payment, as compensation, to him.

As both the appeals arise out of common judgment and award rendered in Motor Accident Claim Application No. 207 of 1976, they are being disposed of by this common judgment.

2. The appellant of First Appeal No.198 of 1980 was driving his motor-cycle with his father on the pillion seat on May 30, 1976. He was approaching the cross-roads near the Post Office at Fatehganj in the city of Vadodara. He had slowed down and sounded horn before entering the road. However, all of a sudden, the respondent No.2 came with the truck in an uncontrollable speed rashly and negligently and dashed against the appellant's motor-cycle. The appellant and his father were injured. The injuries sustained by the appellant were serious in nature. The motor-cycle was also damaged. The appellant had to remain as an indoor patient at the SSG Hospital, Vadodara for 40 days. For better treatment, he was shifted to Jaslok Hospital, Bombay and thereafter to Parsi General Hospital, Bombay where number of major operations were performed upon him. According to the appellant, he was required to spend a sum of Rs. 25,000/-for his medical treatment and Rs.25,000/- for conveyance etc. The appellant was a permanent employee of the Central Bank of India and was likely to be promoted to the post of officer in the said Bank. What was claimed by the appellant was that he was likely to be permanently disabled and his marriage prospects were also adversely affected. Under the circumstances, he instituted Motor Accident Claim Application No. 207 of 1976 before the Motor Accident Claims Tribunal No.I at Vadodara and claimed a sum of Rs.3,00,000 (Rupees Three Lacs only) as compensation with interest and costs.

3. On service of summons, the respondent No.1 filed his written statement at Exh.25 controverting the averments made by the appellant in his claim petition. What was averred by the respondent No.1 in his reply was that the appellant himself was rash and negligent in driving his motor-cycle and, therefore, he was not entitled to get the compensation. No written statement was filed on behalf of the respondent No.2, who was the driver of the truck. The respondent No.3 i.e. The Oriental Fire and General Insurance Company Limited filed written statement at Exh.10. In the said written statement, the contentions which were raised by the respondent No.1 in his written statement were reiterated.

4. Having regard to the controversies between the parties, the Tribunal framed issues for determination at Exh.28. The appellant examined in all 20 witnesses in support of his case pleaded in the claim petition; whereas on behalf of the respondents, only one witness was examined. On appreciation of evidence adduced before it, the Tribunal held that it was proved by the appellant

that he had received injuries as a result of rash and negligent driving of the Truck bearing Registration No.MHD-5554 by the respondent No.2. The Tribunal found that the claimant was also negligent in driving his motor-cycle, and further deduced that the respondent No.2 and the appellant were guilty of negligence in the ratio of 75:25. So far as income of the appellant is concerned, the Tribunal found that the income of the appellant was Rs.500/-per month. On assessment of evidence produced, the Tribunal has awarded (1) Rs.40,000/-as compensation for pain, shock and sufferings and loss of amenities and enjoyment of life, (2) Rs.45,000/-as reimbursement of expenses as per bills produced by the appellant, (3) Rs.15,000/-as reimbursement of other sundry expenses, (4) Rs.6,000/-as compensation for loss of income, and (5) Rs.55,000/-being global amount of compensation for future expenses; i.e. in all Rs.1,61,000/-. Out of this sum, the Tribunal has deducted 1/4th amount i.e. Rs.40,250/-on account of contributory negligence of the appellant. In the ultimate analysis, the Tribunal has directed the respondents to pay to the appellant a sum of Rs.1,20,750/-as compensation with proportionate cost and interest at the rate of 6% per annum from the date of application till the payment, by judgment dated February 16, 1979, which has given rise to the above-numbered two appeals.

5. In First Appeal No.1519 of 1979, the claim of the Oriental Fire and General Insurance Company Limited is that it was not liable to pay any amount exceeding Rs.50,000/-(Rupees Fifty Thousand only) having regard to the provisions of Section 95 of the Motor Vehicles Act, 1939, and the terms and conditions stipulated in the insurance policy; whereas in First Appeal No.198 of 1980, the claim of the original claimant is that he should have been awarded compensation of Rs.3,00,000/-(Rupees Three Lacs) with proportionate costs and interest from the date of the application till payment.

6. We have heard the learned advocates of the parties and taken into consideration the record and proceedings of the case. Having regard to the nature of the controversy involved in two appeals, we had requested Mr.M.T.M.Hakim, learned advocate practising in this Court, to assist the Court, who has readily and ably assisted the Court during the hearing of the appeals.

7. Admittedly, the insurance policy, in this case, is of a date prior to the coming into force of the new Motor Vehicles Act, 1988 on July 1, 1989. The liability

of the Insurance Company to satisfy the judgments against the persons insured in respect of the third-party risk was covered under Section 96 of the Motor Vehicles Act, 1939, the relevant part of which was as under :

> "96. Duty of insurers to satisfy judgments against persons insured in respect of third-party risks:- (1) If, after a certificate of insurance has been issued under sub-section(4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section(1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virture of any enactment relating to interest on judgments."

8. Under the insurance policy, which is produced on the record of the case at Exh.51, the limit of the Company's liability in respect of any one claim or series of claims arising out of one event is Rs.50,000/- (Rupees Fifty Thousand only) only, which is quite evident from the Schedule attached to the Policy. Therefore, this Court is of the opinion that the Tribunal was not justified in holding that the liability of the Insurance Company was to pay compensation in excess of Rs.50,000/(Rupees Fifty Thousand). To that extent, First Appeal No.1519 of 1979 filed by the Oriental Fire and General Insurance Co.Ltd. will have to be accepted by holding that the Company's liability in respect of the accident in question was to the extent of Rs.50,000/-(Rupees Fifty Thousand) only.

9. However, the question which deserves consideration is whether the direction given by the Tribunal to the Insurance Company also to pay a sum of Rs.1,20,750/-,as compensation to the original claimant, with proportionate cost and interest at the rate of 6% per annum from the date of the application till payment,

which is in excess of Rs.50,000/-(Rupees Fifty Thousand), should be upheld or not.

10. Mr.Arun H.Mehta, learned advocate of the Insurance Company, contended that prior to the coming into force of the Motor Vehicles Act, 1939, there was law of torts under which Insurance Company could not have been sued, and in case the vehicle was insured, the owner would have been able to sue the Insurance Company for the amount which the insured was required to pay to the injured by way of compensation. Explaining further, it was pleaded that on coming into force of the provisions of the said Act, the Insurance Company was required to be issued notice about the claim made by the injured and in such an application, the Insurance Company was entitled to raise statutory defences and if there was an award, it could have been executed against the Insurance Company, which indicates that the right of injured to recover compensation from the Insurance Company arose not under the contract of insurance, but under the provisions of the Motor Vehicles Act. Therefore, it was asserted by the learned counsel of the Insurance Company that to determine the right of injured against the Insurance Company, one should look to Sections 95 and 96 for the limits of liability of the Insurance Company and as it is not provided that the Insurance Company would be liable to pay compensation in excess of the liability mentioned in the insurance policy, a direction cannot be given that the injured would be entitled to recover the amount awarded from the Insurance Company, and that the insurer, in turn, would be entitled to recover the excess amount from the insured. What was maintained by the learned counsel of the Insurance Company was that it would be wrong to look to the contract between the insured and the insurer to which the injured is not a party for the purpose of holding that the injured would be entitled to recover amount of compensation awarded by the Tribunal from the insurer beyond its liability under Sections 95 & 96 of the Motor Vehicles Act, 1939, and thereafter the insurer would be entitled to recover the excess amount from the insured and, therefore, it should be held that the claimant would be entitled to recover from insurer only upto the limits stated in Section 95(2), and the balance has to be recovered from the insured. It was also argued that in view of the well settled principle of law that the third-party cannot sue on contract, the question raised in the appeal should be answered in favour of the Insurance Company.

In reply, Mr.R.N.Shah, leaned advocate of the claimant, and Mr.M.T.M.Hakim, learned advocate, who has

intervened at the request of the Court, contended that the avoidance clause in the insurance policy does not enable the Insurance Company to resist or avoid the claim made by the claimant and the clause arises for consideration only in a dispute between the insurer and the insured. According to the learned counsel of the claimant and the learned advocate Mr.M.T.M.Hakim, the Insurance Company is also liable to meet the claim of the claimant and satisfy the award passed by the Tribunal, even if it is held that the liability under the policy is limited to the extent of Rs.50,000/-(Rupees Fifty Thousand only) in view of the avoidance clause and, therefore, there being no substance in the contentions raised on behalf of the Insurance Company, the same should not be accepted. In support of their plea, the learned advocates have placed reliance on the decisions of the Supreme Court in (i) New India Assurance Co.Ltd. v. C.M.Jaya and others, (2002)2 SCC 278, (ii) Amrit Lal Sood and another v. Kaushalya Devi Thapar and others, (1998)3 SCC 744, and (iii) Oriental Insurance Co.Ltd. v. Cheruvakkara Nafeessu and others, (2001)2 SCC 491.

11. Before considering the question raised in the appeal, it would be appropriate to refer to certain terms of the Policy. In the schedule attached to the Policy, important notice in block is displayed, which is as under:-

IMPORTANT NOTICE
The insured is not indemnified if the vehicle is used or driven otherwise than in accorance with this Schedule. Any payment made by the Company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act, 1939 is recoverable from the Insured. See the Clause headed "AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY".

Further, in the Policy itself, there is a clause pertaining to avoidance of certain terms and right of recovery, which reads as under:-

"AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any Endorsement hereon shall affect the right of any person indemnified by this Policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96.

BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions."

12. While considering the contentions raised by Mr. Arun H.Mehta, learned advocate of the Insurance Company, it would be advantageous to refer to three judgments of the Supreme Court which have been brought to the notice of the Court by learned counsel Mr.M.T.M.Hakim.

(i) In Amrit Lal Sood and another (supra), a Car which was being driven by the first appellant had collided with a goods carrier, as a result of which another person who was travelling in the Car sustained injuries and was hospitalised for some time. The Car was insured under a comprehensive policy. The injured person claimed compensation before the Motor Accident Claims Tribunal impleading the owners and drivers of both the vehicles as well as the insurers. The Tribunal found that the accident occurred due to negligence of the driver of the Car and passed an award for compensation against the appellants and the insurer. The claimant filed an appeal in the High Court claiming more compensation, while the insurer filed an appeal disputing its liability to satisfy the claim. The claimant's appeal was allowed in part and the compensation was enhanced. The learned Single Judge of the High Court held that the claimant was a gratuitous passenger travelling in the Car and the insurer was therefore not liable. In the Letters Patent Appeal, the Division Bench confirmed the view of the learned Single Judge that the insurer was not liable, as the claimant was only a gratuitous passenger in the vehicle, but it further enhanced the compensation. The driver and owner of the Car thereupon preferred an appeal before the Supreme Court. The Supreme Court on construction of Sections 94 & 95 of the Motor Vehicles Act, 1939 as well as the Policy produced on the record of the said case has held as under in Paras 12, 13 and 14 of the reported decision:

"12. Learned counsel for the appellants has placed reliance on the judgment in New Asiatic Insurance Co.Ltd. v. Pessumal Dhanamal Aswani

in support of the claim of the first appellant. In that case, the insurer permitted another person to drive his car and while the said person was driving the car, it met with an accident. The driver of the car faced an action for damages. The question was whether the insurance policy would enable the said driver to claim indemnity from the insurance company. On a consideration of the terms of the policy, the Court held that the company would be liable to indemnify him. In the course of the judgment, the Court said:

'The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect of its realising damages for the injuries suffered, but vis-a-vis the insured, the company does not undertake that liability or undertakes it to a limited extent. It is in view of such a possibility that various conditions are laid down in the policy. Such conditions, however, are effective only between the insured and the company, and have to be ignored when considering the liability of the company to third parties. This is mentioned prominently in the policy itself and is mentioned under the heading 'Avoidance of certain terms and rights of recovery', as well as in the form of 'an important notice' in the Schedule to the policy. The avoidance clause says that nothing in the policy or any endorsement thereon shall affect the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of the Act. It also provides that the insured will repay to the company all sums paid by it which the company would not have been liable to pay but for the said provisions of the Act. The 'Important Notice' mentions that any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Act is recoverable from the insured, and refers to the avoidance clause.

Thus, the contract between the insured

and the company may not provide for all the liabilities which the company has to undertake vis-a-vis the third parties, in view of the provisions of the Act. We are of the opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy, it is reasonable to conclude that proviso (a) of para 3 of Section II is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of third parties' claim the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended.'

"13. In the policy in the present case also, there is a clause under the heading: "AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY" which reads thus :

"Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96. BUT the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions."

"14. The above clause does not enable the insurance company to resist or avoid the claim made by the claimant. The clause will arise for consideration only in a dispute between the insurer and the insured. The question whether under the said clause the insurer can claim repayment from the insured is left open. The circumstance that the owner of the vehicle did not file an appeal against the judgment of the Single Judge of the High Court under the letters patent may also be relevant in the event of a claim by the insurance company against the insured for repayment of the amount. We are not concerned with that question here."

(ii) In Oriental Insurance Co.Ltd. (supra), the claim

petition was filed by the legal heirs of the deceased claiming Rs.2 lacs as compensation. The Oriental Insurance Co.Ltd. had specifically averred in its reply that its liability was limited to Rs.50,000/(Rupees Fifty Thousand) only under the policy of insurance. An award of Rs.1,94,150/-was passed by the Claim Tribunal and the Insurance Company was fastened with the entire liability. The appeal filed against the order of the Claim Tribunal was dismissed by the High Court. In appeal, the Supreme Court noticed that the insurance policy was of a date prior to the coming into force of new Motor Vehicles Act and the limit of the Company's liability was Rs.50,000/(Rupees Fifty Thousand) only. However, the Supreme Court noticed the avoidance clause of the Policy, and after referring to the decisions of the Supreme Court in (i) New Asiatic Insurance Co.Ltd. v. Pessumal Dhanamal Aswani, AIR 1964 SC 1736, (ii) Amrit Lal Sood v. Kaushalya Devi Thapar, (1998)3 SCC, 744, (iii) New India Assurance Co.Ltd. v. Shanti Bai (Smt.) and others, (1995)2 SCC 539, and (iv) National Insurance Co.Ltd. v. Jugal Kishore and ors., (1988)1 SCC 626, held that the Oriental Insurance Company Limited was liable to pay the entire award amount to the claimant and upon making such payment, the Insurance Company was entitled to recover the excess amount from the insured by executing the award against the insured to the extent of such excess as per Section 96(4) of the Motor Vehicles Act, 1988.

13. The plea that the decision in Amrit Lal Sood (supra) has been overruled by Five Judge Constitution Bench of the Supreme Court in New India Assurance Co.Ltd. v. C.M.Jaya and others, (2002)2 SCC 278, has no substance. In fact, after referring to the said decision and also the earlier decisions of the Supreme Court in New India Assurance Co.Ltd. (supra), the Constitution Bench has observed in Paras 10 & 11 of the reported decision as under :-

"10. On a careful reading and analysis of the decision in Amrit Lal Sood it is clear that the view taken by the Court is no different. In this decision also, the case of Jugal Kishore is referred to. It is held :

(i) that the liability of the insurer depends on the terms of the contract between the insured and the insurer contained in the policy;

(ii) there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum

requirement of the statute whereby risk to the gratuitous passenger could also be covered; and

(iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

Hence, the Court after noticing the relevant clauses in the policy, on facts found that under Section II(1)(a) of the policy, the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously travelling in it. Further, referring to the case of Pushpabai Purshottam Udeshi it was observed that the said decision was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement under Section 95 of the Act. As such, that decision had no bearing on Amrit Lal Sood case as the terms of the policy were wide enough to cover a gratuitous occupant of the vehicle. Thus, it is clear that the specific clause in the policy being wider, covering higher risk, made all the difference in Amrit Lal Sood case as to unlimited or higher liability. The Court decided that case in the light of the specific clause contained in the policy. The said decision cannot be read as laying down that even though the liability of the Insurance Company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to crate unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract

of insurance which is not permissible.

11. In the light of what is stated above, we do not find any conflict on the question raised in the order of reference between the decisions of two Benches of three learned Judges in Shanti Bai and Amrit Lal Sood aforementioned and, on the other hand, there is consistency on the point that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the Insurance Company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Act. In Amrit Lal Sood case the decision in Shanti Bai is not noticed. However, both these decisions refer to the case of Jugal Kishore and no contrary view is expressed."

The above paragraphs quoted from the decision of the Constitution Bench would indicate that the judgment in Amrit Lal Sood (supra) is not overruled at all. Further, Five Judge Constitution Bench had no occasion to consider the avoidance clause in the insurance policy which is considered in Amrit Lal Sood (supra) and Oriental Insurance Co.Ltd. (supra). Applying the principles laid down in the above referred to two decisions of the Supreme Court to the facts of the present case and more particularly to the terms and conditions stipulated in the insurance policy Exh.51, this Court is of the opinion that though the liability of the Insurance Company is limited to the extent of Rs.50,000/- (Rupees Fifty Thousand) only, the Insurance Company is liable to pay the entire award amount to the claimant and upon making such payment, the Insurance Company can recover the excess amount from the insured by executing the award against the insured to the extent of such excess amount as per Section 96(4) of the Motor Vehicles Act, 1939.

14. The plea that the claimant is not a party to the contract of insurance policy and, therefore, would not be entitled to the benefit of avoidance clause has no substance. In New India Assurance Company Limited v. Rula & Ors., 2001 (2) G.L.R. 1219, the Supreme Court on examination of provisions of Sections 64VB, 146(1), 147(5) & 149(1) of the Motor Vehicles Act, 1988, has held that any contract of insurance under Chapter 11 of the Motor Vehicles Act, 1988, contemplates a third party, who is not a signatory or a party to the contract of insurance, but is nevertheless protected by such contract. Further, section 96 is a substantive provision

which declares the liability of the insurer to pay the claimant directly. The State has thus created a liability in the insurer to the injured person. The right of third parties to get compensation from the insurer, being a statutory one, is independent of the contractual right and obligation between the insurer and the insured. Having regard to the salutary provisions of the Motor Vehicles Act, the plea that the claimant is not a party to contract of insurance policy and would therefore, be not entitled to claim from insurer an amount in excess of statutory liability, cannot be accepted.

15. The net result of the above discussion is that though the appeal filed by the Insurance Company will have to be accepted in part by holding that its liability in respect of the accident in question is limited to the extent of Rs.50,000/-, it will have to be further held that the claimant would be entitled to recover the whole amount of compensation from the Insurance Company also and upon making such payment, the Insurance Company would be entitled to recover the excess amount from the insured.]

16. So far as First Appeal No.198 of 1980 filed by the claimant for enhancement of compensation is concerned, we find that the claimant had claimed Rs.1 Lac under the head of pain, shock and sufferings, but the Tribunal has awarded a sum of Rs.40,000/-as compensation for pain, shock and sufferings as well as loss of amenities and enjoyment of life. The reasons given by the Tribunal for awarding Rs.40,000/-as compensation under the head of pain, shock and sufferings are to be found in paragraph 37 of the impugned judgment. Before awarding Rs.40,000/-as compensation under the head of pain, shock and sufferings, the Tribunal has taken into consideration the law on the point as well as the evidence adduced by the claimant with regard to injuries. This Court concurs with the findings recorded by the Tribunal in paragraph 37 of the judgment, and holds that no case is made out by the claimant to enhance compensation of Rs.40,000/-ordered to be paid to him under the head of pain, shock and sufferings to Rs.1 Lac. Again for the medical expenses, the claimant had claimed Rs.45,000/-which have been allowed by the Tribunal. In view of the evidence adduced by the claimant, the Tribunal has awarded compensation as mentioned in paragraph 39 of the judgment for which reasons are assigned in paragraphs 20 to 38 of the judgment. The compensation awarded by the Tribunal cannot be regarded as inadequate or on the lower side so as to warrant interference of the appellate Court in the matter of

quantification of compensation. On overall view of the matter, this Court is satisfied that a just compensation has been ordered to be paid to the claimant. Further, the evidence indicated that negligence of the claimant had also contributed in happening of the accident. Therefore, the Tribunal was justified in deducting 1/4th amount from the amount of compensation which was found payable to the claimant. Having regard to the facts as emerging from the record, we are of the opinion that no case is made out by the claimant for enhancement of compensation, and the appeal is liable to be dismissed.

[17. For the foregoing reasons, First Appeal No.1519 of 1997 filed by the Oriental Fire & General Insurance Company is partly allowed by holding that its liability under the policy is limited to the extent of Rs.50,000/-(Rs. Fifty Thousand) only, but it is further held that the Insurance Company is liable to pay the entire amount awarded by the Tribunal to the claimant, and upon making such payment, the Insurance Company can recover the excess amount from the insured by executing this award against insured to the extent of such excess amount as per Section 96(4) of the Motor Vehicles Act.]

First Appeal No.198 of 1980 filed by the claimant for enhancement of compensation is dismissed. The parties to both the appeals are directed to bear their own costs. The office is directed to draw award in terms of this judgment.

Interim relief granted in First Appeal No. 1519 of 1979 vide order dated December 18, 1979 is hereby vacated and the claimant would be free to execute the award of the Tribunal.

18. At this stage, Mr.A.H.Mehta, learned advocate of the Insurance Company,prays that execution and operation of the judgment delivered by this Court be stayed for a reasonable time to enable the Insurance Company to approach the higher forum. What we have done while disposing of the appeals is to notice the relevant clauses incorporated in the insurance policy and apply the principles of law laid down in the reported decisions of the Supreme Court to the facts of the case. Hence, in our view, interim relief granted earlier cannot be continued any more, nor operation and implementation of the judgment delivered by us can be stayed to enable the Insurance Company to approach the higher forum. Under the circumstances, the prayer to stay operation and implementation of the judgment delivered by us in First Appeal No.1519 of 1979, or to continue interim relief granted earlier, to enable the Insurance Company to

approach higher forum is hereby refused.

(J.M.Panchal,J.)

(A.M.Kapadia,J.)

(patel)